

**FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1028**

Introduced by

Legislative Management

(Government Services Committee)

1 A BILL for an Act to amend and reenact subsection 1 of section 48-01.2-20, subdivision f of  
2 subsection 5 of section 48-01.2-20, subsection 6 of section 48-01.2-20, section 48-01.2-22, and  
3 subsection 5 of section 54-44.7-03 of the North Dakota Century Code, relating to the selection  
4 process for construction management at-risk planning and design phase services and the  
5 procurement of architect, engineer, construction management, and land surveying services.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 1 of section 48-01.2-20 of the North Dakota  
8 Century Code is amended and reenacted as follows:

- 9 1. A governing body electing to utilize a construction management at-risk delivery  
10 process for a proposed public improvement shall create a selection committee  
11 composed of:
- 12 a. An administrative individual from the governing body.
  - 13 b. A registered architect, excluding any architect contracted for the project.
  - 14 c. A registered engineer, excluding any engineer contracted for the project.
  - 15 d. A licensed contractor.

16 **SECTION 2. AMENDMENT.** Subdivision f of subsection 5 of section 48-01.2-20 of the North  
17 Dakota Century Code is amended and reenacted as follows:

- 18 f. The person's fees and expenses for the entire project, which must be identified  
19 on a standard bid form approved by the director of the office of management and  
20 budget and issued by the governing body for the project;

21 **SECTION 3. AMENDMENT.** Subsection 6 of section 48-01.2-20 of the North Dakota  
22 Century Code is amended and reenacted as follows:

1           6. The selection committee shall evaluate each submission based on the qualification  
2           criteria under subsection 5 without modifying the qualification criteria and shall include  
3           the numeric scoring of each criteria item on a weighted basis, ~~with~~. Excluding the  
4           person's fees and expenses, which must be weighted no less than twenty percent, no  
5           item being ~~may be~~ weighted at more than twenty percent and no less than five percent.  
6           The weighting of the qualification criteria must be done in a manner to ensure no  
7           subjective bias and encourage the maximum participation of qualified construction  
8           managers at-risk. Each member of the selection committee shall apply the same  
9           weighting of qualification criteria for a project.

10          **SECTION 4. AMENDMENT.** Section 48-01.2-22 of the North Dakota Century Code is  
11          amended and reenacted as follows:

12          **48-01.2-22. Subcontractor bids.**

- 13          1. An agency construction manager selected for a public improvement shall publicly  
14          advertise pursuant to section 48-01.2-04 and publicly open bids pursuant to section  
15          48-01.2-07 from subcontractors for the work items necessary to complete the general  
16          construction portions of the improvement. The agency construction manager shall  
17          evaluate the bids and award the subcontract to the lowest responsible bidder. The  
18          governing body may influence the selection of the subcontractors, but only insofar as  
19          the governing body's past experience with a subcontractor or a current legal dispute  
20          with a subcontractor.
- 21          2. A construction manager at-risk selected for a public improvement shall publicly  
22          advertise pursuant to section 48-01.2-04 and publicly open bids pursuant to section  
23          48-01.2-07 from subcontractors for the work items ~~the construction manager at-risk~~  
24          ~~chooses not to perform~~ necessary to complete the general construction portions of the  
25          improvement. A construction manager at-risk must submit a bid for any work item  
26          necessary to complete the general construction portions of the improvement the  
27          construction manager at-risk chooses to perform pursuant to this section. The  
28          construction manager at-risk ~~then~~ shall evaluate the bids and ~~determine which is the~~  
29          ~~most responsible~~ award the subcontract to the lowest responsible bidder. The  
30          governing body may influence the selection of the subcontractors, but only insofar as

1 the governing body's past experience with a subcontractor or a current legal dispute  
2 with a subcontractor.

3 **SECTION 5. AMENDMENT.** Subsection 5 of section 54-44.7-03 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5 5. a. The agency selection committee shall evaluate each of the persons or firms  
6 interviewed on the basis of the following criteria:

7 a. (1) Past performance.

8 b. (2) The ability of professional personnel.

9 c. (3) Willingness to meet time and budget requirements.

10 d. (4) Location, with higher priority given to firms headquartered in North Dakota.

11 e. (5) Recent, current, and projected workloads of the persons or firms.

12 f. (6) Related experience on similar projects.

13 g. (7) Recent and current work for the agency.

14 (8) Fees and expenses for the entire project, which must be identified on a  
15 standard information submission form approved by the director of the office  
16 of management and budget and issued by the agency selection committee  
17 for the project.

18 b. This subdivision does not apply to:

19 (1) Section 24-02-07.3, unless the project is on the state capitol grounds and  
20 exclusively involves state funds; or

21 (2) A project involving federal funds when the use of such funds prohibit this  
22 criteria.

23 c. Based upon these evaluations, the agency selection committee shall select the  
24 three which, in its judgment, are most qualified, ranking the three in priority order.  
25 The agency selection committee's report ranking the interviewed persons or firms  
26 must be in writing and must include data substantiating its determinations. This  
27 data must be available to the public upon written request.